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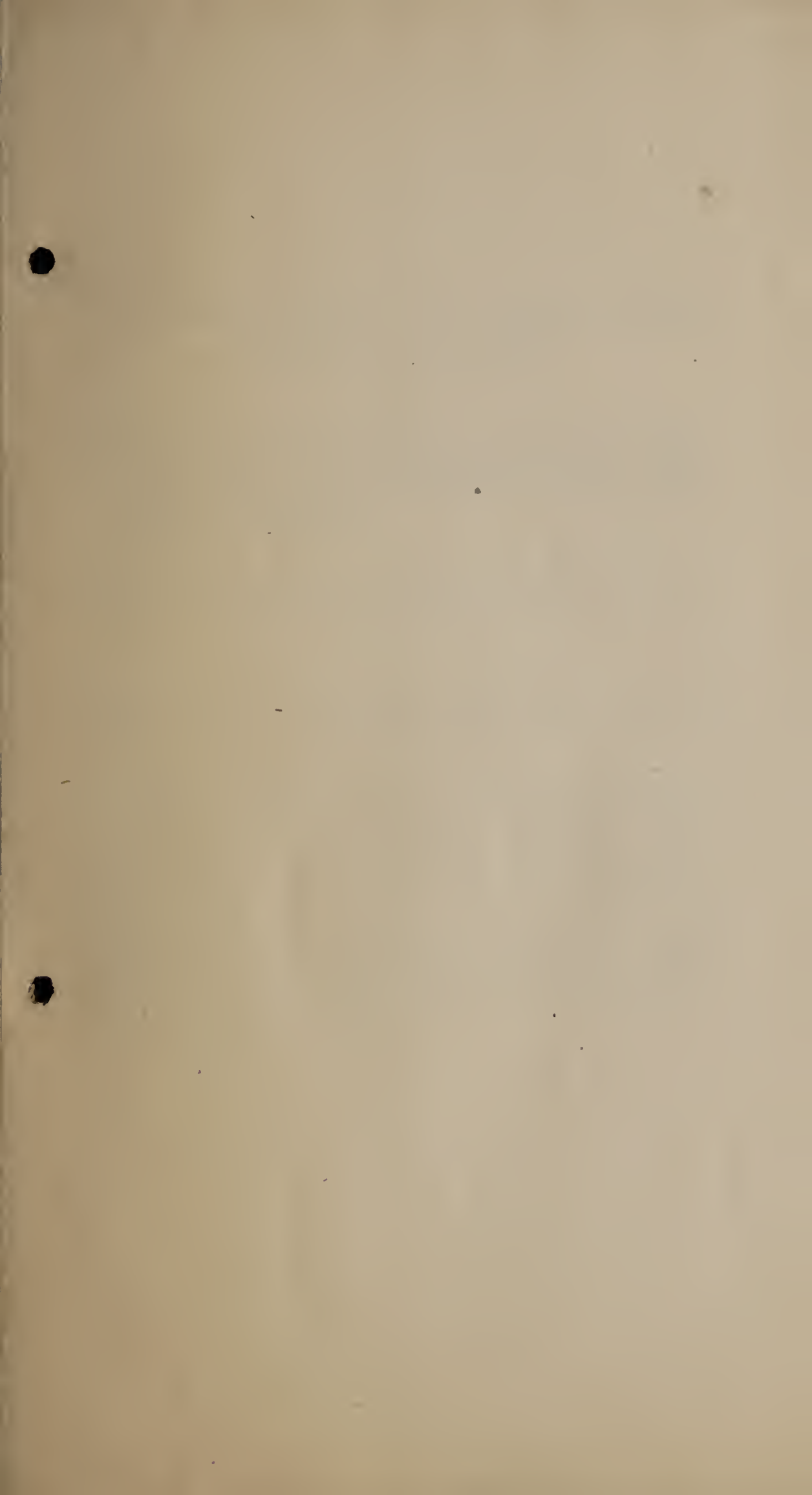
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U. S. DEPARTMENT OF AGRICULTURE,
BUREAU OF CHEMISTRY.

MANUAL OF PROCEDURE
FOR THE GUIDANCE OF
**STATE HEALTH, FOOD, AND
DRUG OFFICIALS.**



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1915.



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U. S. DEPARTMENT OF AGRICULTURE,
BUREAU OF CHEMISTRY.

MANUAL OF PROCEDURE FOR THE GUID-
ANCE OF STATE HEALTH, FOOD, AND
DRUG OFFICIALS.

Compiled by J. S. ABBOTT, *Chemist in Charge, State Co-
operative Food and Drug Control.*

SECTION 5 OF THE FOOD AND DRUGS ACT OF
JUNE 30, 1906.

It shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

DEPARTMENT OF JUSTICE.

WASHINGTON.

SUBJECT: Violations of the Food and Drugs Act reported to United States attorneys under section 5 of said act, by health or food or drug officers or agents of any State, Territory, or the District of Columbia.

DEPARTMENT CIRCULAR NO. 116 (NEW).

By section 5 of the act of June 30, 1906, known as the Food and Drugs Act, it is provided that it shall be the duty of each United States attorney to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia, shall present satisfactory evidence of violation of said act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay, for the enforcement of the penalties provided therein. * * *

When information is received by United States attorneys from any one of such officials, which is deemed sufficient to warrant the forfeiture of goods, proper proceedings for that purpose should be at once instituted, but the case should thereafter be reported to this department.

GEORGE W. WICKERSHAM,
Attorney General.

JANUARY 3, 1910.

ENFORCEMENT OF THE FOOD AND DRUGS ACT.

The United States Department of Agriculture secures evidence of violations of the act in accordance with the plan fixed by Congress. State health, food, and drug officials who have been commissioned by the Secretary of Agriculture to collect and analyze samples of foods and drugs are cooperative agents or officers of the department, and for the sake of harmony and convenience may therefore be expected to follow the same general procedure as the regular officers of the department. A bound volume under the title "Manual of Instructions for Officials, Analysts, and Inspectors connected with the Food and Drug Inspection of the Bureau of Chemistry, U. S. Department of Agriculture," has been sent to commissioned State officials and will be found very useful as a book of reference for more detailed and elaborate information than that which is presented here. In brief, the procedure which commissioned State officials, inspectors, and collaborating chemists should follow in harmony with the procedure followed by the United States Department of Agriculture in securing evidence for the enforcement of the Food and Drugs Act of June 30, 1906, is as follows:

EVIDENCE FOR PROSECUTION OF INDIVIDUALS.

INSPECTORS.

1. Secure evidence that the articles

(a) Are offered for sale in original unbroken packages in any State other than that in which they have been respectively manufactured or produced, or

(b) Are being transported from one State, Territory, District, or insular possession to another, or, having been transported, remain unloaded, unsold, or in original unbroken packages, or

(c) Are sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States.

(d) Have been received from any other State, Territory, or the District of Columbia, or any foreign country, or

(e) Having been so received are delivered or offered for delivery in original unbroken packages.

- (f) Are intended for shipment to any foreign country, or
- (g) Have been manufactured in the District of Columbia or in any Territory of the United States.

2. Collect "official samples." (For information as to quantity of sample to be taken, consult the manual of instructions of the Bureau of Chemistry, U. S. Department of Agriculture.)

(a) Describe samples, using "Inspector's Description of Sample" book, furnished by the Bureau of Chemistry. Write your address underneath your name on this description.

(b) Divide sample into four parts or take four units.

(c) Seal sample with paper seals furnished by the Bureau of Chemistry.

(d) Number samples with coupon numbers torn from "Inspector's Description of Sample" slip.

(e) Secure certified copy of dealer's guaranty, if he has such guaranty.

(f) Transport samples, preferably in person, or by parcel post, or by express, to your collaborating chemist.

3. Secure original or copy of invoices and freight records, and write your name and the I. S. number on back of same so you can identify them.

4. Secure a "Dealer's Receipt," signed by some one who can testify that the samples were taken from goods covered by the invoices and freight records.

5. Write up full report, making four copies, on "Inspector's Report on Collection of I. S. No. —" forms. (These forms are loose sheets and are made up mainly from the "Inspector's Description of Sample" slips and from the invoices and freight records. I. S. No. — means Interstate No. — and is used to distinguish this number from numbers placed upon import samples.)

6. Send invoices, freight records, dealer's receipt, and three copies of "Inspector's Report on Collection of I. S. No. —" to your collaborating chemist.

7. Send "Inspector's Description of Sample" to Interstate Office, Bureau of Chemistry. This keeps the bureau informed of the activities of commissioned officials.

8. Give your collaborating chemist any additional information which will assist him in making an analysis of the sample or in interpreting the result of analysis. The im-

portance of all the information in possession of the inspector causing him to take the sample can not be overestimated.

9. Secure drawing or photograph of label, or preferably an original label when one can be obtained, and send to collaborating chemist.

10. Informal samples for seizure action. (See page 11.)

COLLABORATING CHEMISTS.

1. Receive samples and sign for them.

2. Make record of date of receipt, whether received from inspector in person, by registered mail, parcel post, or by express, condition of box, the I. S. number of the sample. Make this record upon "Sample Index Card," furnished by the Bureau of Chemistry.

3. Analyze sample. (If in doubt as to the determinations to make, or the composition of unadulterated samples, or the methods of analysis, consult Bureau of Chemistry.)

4. Retain samples and parts of samples, sealed and under lock and key, until notified what disposition to make of them.

5. Report result of analysis to the commissioned State official on analytical report sheet furnished by the Bureau of Chemistry. Check each item of the analysis with your signature or initials. This report passes through many hands. This report should be attached to the reports received from the inspectors and sent to the commissioned State official, if there be one. If the collaborating chemist is the commissioned State official, he handles the records as follows:

COMMISSIONED STATE OFFICIALS.

1. The commissioned State official should send to the nearest United States food and drug inspection laboratory the sample or samples which the collaborating chemist has under lock and key and the following forms with his recommendations:

(a) The chemist's analytical report sheet with the commissioned State official's approval thereon.

(b) Two copies of "Inspector's Report on Collection of I. S. No. —."

(c) "Dealer's Receipt."

(d) Invoices and freight records, properly checked, with inspector's signature on back.

(e) Drawing or photograph of the label or an original label if one can be obtained without destroying the identity of the sample.

(f) The inspector's report to the collaborating chemist.

These records should be transmitted by letter of commissioned State official with any additional comments deemed pertinent to the case.

The foregoing procedure is followed when the commissioned State official (or the collaborating chemist acting as such) has secured this information for the Bureau of Chemistry for its action.

If, however, the commissioned State official desires to institute a seizure action, all the foregoing information may be put into the hands of the proper United States attorney instead of sending it to the nearest United States food and drug inspection laboratory. If no seizure action is instituted, the information should be transmitted direct to the nearest United States food and drug inspection laboratory.

UNITED STATES FOOD AND DRUG INSPECTION LABORATORIES.

When the United States food and drug inspection laboratory receives the sample, the analytical report sheet, and the necessary records obtained by the inspector for the proof of the interstate character of the goods which were sampled, a check analysis will be made of the sample. The commissioned State official and the collaborating chemist will be notified of the opinion and final action of the Bureau of Chemistry concerning the disposition of the case.

BUREAU OF CHEMISTRY.

When the analytical report is received at the Bureau of Chemistry the results of analysis or examination are reviewed, and if the conclusions of the analyst that the product is adulterated or misbranded are confirmed, preliminary hearings are appointed for all interested parties, in accordance with the provisions of section 4 of the act and regulation 5, as amended.

HEARINGS.

PURPOSE OF HEARINGS.

The Food and Drugs Act provides that, after a sample of food or drug product, coming within the provisions of the law, has been examined by the Bureau of Chemistry and found to be adulterated or misbranded, notice shall be given to the party believed to be responsible for the violation. The party so notified is given a hearing in order—

(1) That he may present a statement of facts showing any fault or error in the conclusions of the analyst or examiner, and

(2) That he may show whether the goods were sold to him by a wholesaler, manufacturer, jobber, dealer, or other party residing in the United States and guaranteed by such firm to comply with the provisions of the Food and Drugs Act. Upon presentation of evidence of sale and such guaranty, provided the product was in the identical condition in which it was guaranteed and sold, the party cited to such a hearing is relieved of all responsibility and no action will obtain against him.

HOW CITATIONS TO HEARINGS MAY BE ANSWERED.

Answers to citations may be made in person or by attorney at the time and place designated by the party who issues the citations, or by correspondence. Hearings relate only to matters of fact and not to questions of law.

BY WHOM HEARINGS ARE HELD.

The hearings provided for by section 4 of the act are held by or under the direction of the Secretary of Agriculture, who causes to be issued to all interested parties citations containing a statement of the facts on which they will be heard and appointing a time and place for the hearing.

If it appears that any of the provisions of the act have been violated by any person cited to a hearing, the Secretary of Agriculture certifies the facts to the Attorney General for transmission to the proper United States attorney, who causes appropriate proceedings to be commenced and prosecuted in the proper courts of the United States for the enforcement of the penalties provided in the act. The case is certified to the Attorney General in the form of an

information supported by the affidavits of the witnesses setting out the results of the analysis of the sample and other facts necessary to show probable cause for the prosecution.

WITNESSES.

Before the trial of the case the inspector, collaborating chemist, and others necessary to connect up the evidence will be notified to be present at the trial to testify in behalf of the Government. The actual and necessary expenses incurred by such witnesses will be defrayed by the Department of Agriculture or by the Department of Justice.

EXPLANATION OF BLANK BOOKS, LOOSE SHEETS, CARDS, ETC., FURNISHED TO INSPECTORS AND COLLABORATING CHEMISTS.

The forms used by inspectors and chemists for recording information pertaining to examinations for the enforcement of the Food and Drugs Act are in general about the same as those used by State officials; hence it is unnecessary to make a very detailed explanation of them, but it is deemed necessary to refer to them here as follows:

1. "INSPECTOR'S DESCRIPTION OF SAMPLE" BOOK.

This book contains two forms, "Inspector's Description of Sample" and "Dealer's Receipt."

a. *"Inspector's description of sample."*

The "Inspector's Description of Sample" slip is not now made in duplicate—that is, a carbon copy is not made. The notation opposite the "Date of shipment" should be the date of interstate shipment—that is, the date the product enters interstate commerce as shown by the freight records; and the blank opposite "Date reported" is to be left blank, as the information noted therein is to be supplied in the Interstate Office of the Bureau of Chemistry, to which the "Inspector's Description of Sample" slip is forwarded by the inspector. The notation opposite "To whom sent" should be followed by the name and address of the collaborating chemist.

b. *"Dealer's receipt."*

The inspector at the time of the collection of samples should have the "Dealer's Receipt" signed covering the samples purchased. It should be signed by the person

who can testify that the samples were taken from the shipment of the article covered by the invoice and shipping records.

This is very important. Invoices and freight records are not sufficient of themselves to prove an interstate shipment of goods sampled by an inspector. But a dealer, or a dealer's agent or employee, who receives such goods and checks up invoices of them, can connect up the goods and invoices. It does not always follow that the dealer who signed the receipt will be the witness required to prove an interstate delivery, and for that reason the receipt provides for the insertion of the name of the party connected with the firm who can give such testimony. But if the person testifying as to the receipt of the article is not the salesman, he should at least have knowledge of the sale, and that the article sold was the identical article received.

c. "*Bureau of Chemistry I. S. No. —.*"

These are number coupons attached to "Inspector's Description of Sample" slips, reading "Bureau of Chemistry I. S. No. —," and should be detached from slips and placed on each sample or on each division of the sample.

2. "INSPECTOR'S REPORT ON COLLECTION OF I. S. NO. —."

These forms are unbound loose slips, which the inspector should carry with him to remind him of just what information he should secure from the dealer. These may be written up in his own office. The information to be recorded upon these slips is very necessary in the final preparation of a case.

3. SEALS.

Inspectors should use the regulation paper seals bearing the seal of the department, together with a space for noting the I. S. number, date of collection, and the name of the inspector. Each seal which is used upon the sample must bear these notations in the handwriting of the inspector, either in ink or with an indelible pencil; neither initials nor stamps will be sufficient for this purpose.

The seals should be so affixed that the sample may be opened by the analyst without destroying the identifying marks. Care should be exercised in placing them on the package in order to prevent the breaking of the seal in transit. Reading matter contained on the label or stickers of the package should not be obliterated by the seals. If it is impossible to use the seal on a unit package with-

out effacing the label or design, each unit should be numbered and initialed by the inspector and the subdivision securely wrapped in an outer covering and the seals attached to this, after writing thereon the name of the substance of the sample.

SEALING AND PACKING.

It is not necessary that the sealing and packing be done in the store where the sample is purchased, but it is important that the inspector maintain immediate charge of the sample from the moment it is purchased of the dealer until delivered to the post office or express office for shipment. A failure to observe these directions, by following a convenient practice of leaving samples at the hotel unsealed or having delivery made to the inspector by the dealer after purchase, may prejudice the result of the trial if such facts are developed.

EVIDENCE FOR THE PROSECUTION OF ILLEGAL PRODUCTS.

It should be borne in mind that the foregoing procedure is followed in anticipation of a criminal prosecution under section 2 of the act. This procedure is also followed whenever it is intended to start a seizure action under section 10 of the act, which is to be followed by a criminal prosecution.

Whenever it is the intention of an official simply to make a seizure of unlawful goods without following it up with a criminal action, however, the procedure outlined need not be followed precisely. In such a case the procedure is not so complex. In fact, it may not even be necessary to take a sample, as in the case of spoiled fish or other decayed meat. In such cases the examination made by the inspector on the ground takes the place of the laboratory examination of the sample. Accurate notes should be taken by the inspectors of all important points, and they should not rely upon their memory for essentials. It is not necessary in seizure cases to show that the goods were adulterated or misbranded before the time they were offered in interstate commerce.

Seizures of adulterated or misbranded goods may be made through the United States district attorneys independently of the Bureau of Chemistry upon the evidence submitted by commissioned State officials or by any other State health, food, or drug official. This course is de-

sirable in the case of decomposed or putrid perishable food products which are likely to be scattered and consumed before a report of the case could take its regular course through the Department of Agriculture and the Department of Justice. A report of such seizures, however, should be made to the Bureau of Chemistry for proper record, and this should be followed in due time by a report of the judgment of the court in the case, so that an announcement of it may be made in the service and regulatory announcements of the Bureau of Chemistry.

GOODS IN TRANSIT.

It frequently happens that a State official learns of a shipment of adulterated or misbranded goods which, for lack of time or some other reason, he can not have seized. In such cases he should notify the commissioner of the State to which such a shipment is going or the Bureau of Chemistry, giving the information necessary to the identification of the goods, such as car number, destination, consignee, probable time of arrival at destination, etc.

INFORMAL SAMPLES FOR SEIZURE ACTION.

It may not even be necessary for inspectors to take samples preliminary to advising seizure proceedings. A physical examination of the goods by an inspector may be all that is necessary. If the samples are taken as a basis for a seizure action only—

1. They need not be divided into three parts; that is, only one sample need be taken.

2. No records need be submitted with this class of samples. Records necessary to prove the interstate shipment, such as copies of invoices, freight records, and dealer's receipt, will have to be secured, however, if a seizure action is indicated and advised upon the evidence secured by analysis of the sample. These records may be secured subsequent to collection of sample.

3. They should be accompanied by a memorandum explaining the reason for collection.

4. They should be handled with all the precautions prescribed for samples in misdemeanor proceedings.

5. Such samples are called "informal samples."

COLLABORATING CHEMISTS.

In reporting the results of analysis of such samples, which are styled "informal samples" to distinguish them from samples taken as outlined under "Inspectors,"

page 4, known as "official samples," the collaborating chemist should write in the upper left-hand corner of the chemist's analytical report sheet the words "Informal, for seizure."

WHAT GOODS MAY BE SEIZED.

Section 10 of the act indicates in the following language what goods may be seized:

"That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any court of the United States within the district where the same is found, and seized for confiscation by process of libel for condemnation."

HEARINGS.

The courts have held that the provisions of section 4 of the act, authorizing hearings, do not apply to seizure actions, and no hearing is necessary in suits under section 10.

UNITED STATES ATTORNEYS.

Seizure proceedings may be instituted and perfected in the judicial district where the goods are found, and every case appropriate for such proceedings should be reported by the commissioned State officials directly to the United States attorney for the district where the goods are located. In every case the United States attorney should be informed of the facts concerning the interstate shipment of the consignment, of the evidence which is available to prove that the consignment is adulterated or misbranded, the location of the consignment, and the marks by which it can be identified. Copies of reports made to the United States attorneys for the purpose of effecting seizures should be sent to the Bureau of Chemistry as soon as practicable, with a statement showing action thereon.

It is respectfully suggested that in filing information, it is not always necessary to give the name of the consignee or the name of the party in whose possession the goods are found. To do so may work an injustice to a perfectly innocent consignee and interfere with the cooperation between the officials and dealers.

